

COUNTY OF KAUAI

Minutes of Meeting  
OPEN SESSION

Approved as circulated 11/20/17

Board/Committee:		BOARD OF ETHICS		Meeting Date		October 20, 2017		
Location		Mo'ikeha Building, Liquor Conference Room 3			Start of Meeting: 1:00 p.m.		End of Meeting: 1:53 p.m.	
Present		Chair Mary Tudela; Vice Chair Michael Curtis. Members: Susan Burriss; Mia Shiraishi; Ryan de la Pena; Calvin Murashige Staff: Deputy County Attorney Nicholas Courson; Boards & Commissions Office Staff: Administrative Specialist Lani Agoot; Administrator Paula M. Morikami						
Excused		Maureen Tabura						
Absent								
SUBJECT		DISCUSSION				ACTION		
Call To Order						Chair Tudela called the meeting to order at 1:00 p.m. with 6 members present.		
Approval of Minutes		<u>Regular Open Session Minutes of July 21, 2017</u>  Ms. Shiraishi requested an amendment on page 6 of the minutes to insert the word "taxable".				Ms. Shiraishi moved to approve the minutes as amended. Mr. Curtis seconded the motion. Motion carried 4 ayes: 0 nays: 2 abstained.		
Communication		<u>BOE 2017-15 Possible Conflict of Interest and Recusal dated July 21, 2017 from Derek S.K. Kawakami related to a claim filed against the County of Kauai by N.F. Kawakami Store.</u>				Mr. de la Pena moved to receive BOE 2017-15. Mr. Murashige seconded the motion. Motion carried 6:0.		
Request for Advisory Opinion		<u>RAO 17-010 Request for an Advisory Opinion dated September 8, 2017 from Dee Crowell on whether an 89-day contract worker is considered an "employee" and whether that worker is subject to the restrictions of post-employment activity.</u>  Mr. Murashige stated that he felt the Attorney General previously opined on the 89-day contract issue and it was something the State Legislature has dealt with when they hire individuals. He also felt that this matter has been addressed at the State level. Mr. Courson said he has not looked into the matter at the State level; however, in general, the County considers 89-day contract hires as employees from a Human Resources point of view.						

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	<p>Ms. Burris asked whether or not this would be considered a legal opinion. Chair Tudela asked for clarification from Mr. Murashige and Ms. Burris if they were saying they felt the matter should be covered by another jurisdiction to which Mr. Murashige restated that he felt the issue has already been addressed by the Attorney General's office. Ms. Burriss clarified that her question was whether this was a request for a legal opinion as opposed to an opinion the Board had jurisdiction over.</p> <p>Mr. Courson explained that initially, Dee had the Planning Department contact the County Attorney's Office for their opinion, which they provided. He said (County Attorney) Mauna Kea felt that when it came to ethical questions, the Board of Ethics had the last say and Mr. Crowell was advised to seek an advisory opinion.</p> <p>Mr. Murashige commented that he felt it wasn't so much an advisory opinion but more of a legal opinion. Chair Tudela added that when she read the request she initially felt it wasn't a question the Board should entertain because the Board was being asked to anticipate something in the future that hasn't happened yet. Her question was should the Board entertain decision-making based on the question of whether or not someone was an employee on an 89-day contract, and questioned whether this was a Human Resources decision.</p> <p>Mr. Curtis stated that technically, he was an employee and technically it says that for the next year he can't represent anybody in front of the County. Mr. Courson clarified that Mr. Crowell was not currently an employee but was considering taking an 89-day contract. Mr. Curtis asked if Human Resources considered him an employee to which Mr. Courson said yes. Mr. Courson added that he advised Mr. Crowell that if he chose to become an</p>	

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	<p>employee, he needed to consider section 3-1.10 of the County Charter. He added that section 3-1.10(b) would probably apply to Mr. Crowell the same way it applies to full-time employees and he didn't see an exception because Human Resources would consider him an employee. Mr. Courson stated that his instructions from the County Attorney were to always refer ethical matters to the Board of Ethics for their decision, regardless of whether the matter appeared to be open and shut.</p> <p>Mr. Courson advised the Board to invite Mr. Crowell into the discussion via conference call.</p> <p>Chair Tudela stated she wanted further clarification on the question that was being asked of the Board, saying that based on what she read; the question was regarding a future event that hadn't happened.</p> <p>Mr. Murashige stated that the Board needed a legal definition of "employee" and that was not determined by the Board of Ethics to which Mr. Courson agreed.</p> <p>Mr. Crowell joined the meeting via conference call at 1:15 p.m.</p> <p>Chair Tudela welcomed Mr. Crowell to the meeting and informed him that the Board had reviewed his request for an advisory opinion and gave him the option to provide comments.</p> <p>Mr. Crowell updated the Board regarding a position he was offered by the Planning Department for an 89-day contract, stating that he was currently the Director of KIUC and was looking for part-time work. He explained that before he takes the job with the Planning Department, he wanted clarification as to whether he would be considered an "employee" and if so,</p>	

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	<p>would he be subject to the one (1) year Ethic's provision.</p> <p>Mr. Murashige stated that he believed there was a provision either in the by-laws or policy of KIUC where a County or State employee cannot serve as a Director, and suggested Mr. Crowell look into that as well. Mr. Crowell asked the Board if he would be considered a County employee if he were to accept the position to which Chair Tudela said that it was the Board's understanding that if he were to accept the position, based on the definition from the Department of Human Resources, he would be considered an employee.</p> <p>Mr. Courson addressed the Board saying that under the definitions section 3-1.3 of the Code of Ethics, "employee means any nominated, appointed or elected officer or employee of the County including members of boards, commissions, and committees and employees under contract with the County, but excluding council members." Mr. Courson confirmed to Mr. Crowell that he advised the Board that it was his understanding from Human Resources that the County considers 89-day contract hires to be employees of the County and they can receive benefits.</p> <p>Chair Tudela asked Mr. Crowell if he had any further questions to which he replied no. Chair Tudela asked for a motion on the matter. Mr. Murashige stated that he was unsure whether the Board could provide an advisory opinion on this matter, saying that he felt Mr. Crowell was seeking a legal opinion and the Board of Ethics wasn't the body to provide such an opinion. Ms. Burriss agreed, adding that it was a legal interpretation of what was applicable to an employee and not under the Board's jurisdiction.</p> <p>Mr. Curtis disagreed, saying that it was clear that an employee was precluded from representing anybody in front of any County commission or</p>	

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	<p>board for one (1) year after their employment. He said the example provided by Mr. Crowell clearly falls within the parameters of the intent and letter of the law.</p> <p>Chair Tudela read section 20.05 subsection D.2 of the County Charter. She clarified that Mr. Crowell's question was whether he would be defined as an employee and the Board's answer, based on Human Resources' definition of "employee", was yes. Mr. Crowell's second question was if he were to accept the 89-day contract with the Planning Department, would he be held to the one (1) year requirement. Chair Tudela stated that her concern was that the Board was being asked to provide an opinion on something that hadn't happened yet and wasn't sure that the Board had been in this situation before. Mr. Courson provided that advisory opinions were routinely about things that haven't taken place.</p> <p>Mr. Murashige stated that he agreed with Mr. Curtis in terms of outcome but questioned whether it was the Board's responsibility to make the determination and felt it was a legal opinion as opposed to an advisory opinion. He said the question wasn't whether Mr. Crowell would be violating the Ethics Code, but rather a question of whether he would be violating the County's regulations on who can and cannot appear before the County if you were an employee.</p> <p>Mr. Curtis stated that the question Mr. Crowell was asking the Board was if he were to accept the position, would the one (1) year be invoked if he were to represent someone in front of the County and the answer would be yes,</p>	<p>Mr. Curtis moved that the Board find that Mr. Crowell's contractual relationship with the County is defined as employment and that would trigger the one (1) year abstinence from him representing anybody in front of the County.</p> <p>Mr. de la Pena seconded the motion.</p>

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	<p>per his motion. Ms. Burriss clarified that she and Mr. Murashige didn't disagree with that premise. Her concern was that it was a legal opinion.</p> <p>Ms. Shiraishi stated that it was a two-part question; if he were considered an employee, then the Board would consider the second question. She said based on Human Resources, he would be defined as an employee and thus section 3 would be applicable to employees. Ms. Shiraishi added that she, too, questioned whether this was a legal question and out of the Board's jurisdiction.</p> <p>Mr. Murashige provided that if Human Resources already determined that Mr. Crowell would be an employee then there was nothing else the Board could do. Ms. Tudela agreed, adding that she felt this should not have been brought before the Board.</p> <p>Chair Tudela asked Mr. Crowell if he had spoken to anyone in the County about his request to which he provided that he spoke with Human Resources and a County Attorney and was advised in both cases to bring his request to the Board of Ethics.</p> <p>Mr. Courson stated that he felt the spirit of Mr. Crowell's question was if there was an exception for 89-day contracts; because the Code of Ethics is clear, a contract hire is an employee of the County and it would not have been necessary to seek an opinion. He said rendering an opinion based on the spirit of the question would be squarely within the Board's purview to say yes or no; however, he did not see an exception.</p> <p>Mr. Courson clarified that generally, boards and commissions were discouraged from abstentions unless there was an actual conflict, which</p>	<p>Motion failed 3 ayes: 1 nay: 2 abstained.</p>

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	<p>would be a recusal and would be declared at the beginning of the item. He said it was the basic premise of Parliamentary Procedure, as he understood it, that members were there to vote. Mr. Courson added that it was not a rule and he couldn't force it, but it was something he strongly discourages. Chair Tudela asked if a commissioner could abstain if they decided to because she, as Chair, didn't want to impose on members to vote yes or no to which Mr. Courson said Robert's Rules state no one can be forced to vote.</p> <p>Mr. Murashige stated that if he were asked whether Mr. Crowell would be an employee, he would answer yes. Chair Tudela asked Mr. Murashige if he meant that the question should be split to which Mr. Murashige replied that if you answer the first part and say yes, he is an employee, then the second question is moot. Ms. Burriss agreed, saying that the Board has been advised by legal counsel that he would be considered an employee and with that advice, she would say he was an employee and the rest of the question would be moot.</p> <p>Mr. Curtis disagreed that it would be moot because further rules would apply to him as an employee and that was the opinion he was asking for and he already received it.</p> <p>Chair Tudela stated that she wanted to separate the two issues and asked for a motion.</p> <p>Mr. Crowell left the meeting at 1:40 p.m.</p>	<p>Mr. Murashige moved that Dee Crowell would be considered an employee if he were to accept an 89-day contract. Ms. Burriss seconded the motion. Motion carried 6:0.</p>
<b>Business</b>	<u>BOE 2017-16 Review and Possible Approval of 2018 Meeting Schedule</u>	Mr. de la Pena moved to approve the 2018 Meeting Schedule. Mr. Murashige seconded the

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		motion. Motion carried 6:0.
<b>Disclosures</b>	<ol style="list-style-type: none"> <li>1. <u>Eunice Park - Deputy Prosecuting Attorney</u></li> <li>2. <u>Galen T. Nakamura - Charter Review Commission</u></li> <li>3. <u>Alfred Levinthol - Fire Commission</u></li> <li>4. <u>Carol E. Suzawa - Charter Review Commission</u></li> <li>5. <u>Virginia M. Kapali - Charter Review Commission</u></li> <li>6. <u>Isaac K. Cockett - Charter Review Commission</u></li> <li>7. <u>Anthony K. Herndon - Deputy Prosecuting Attorney</u></li> <li>8. <u>Mahealani M. Krafft - Deputy County Attorney</u></li> </ol>	Mr. Murashige moved to receive disclosures 1 through 8 and deem them complete. Mr. Curtis seconded the motion. Motion carried 6:0.
<b>Announcements</b>	<p>Next Meeting: Friday, November 17, 2017 – 1:00 p.m., Mo'ikeha Building, Liquor Conference Room</p> <p>Chair Tudela announced that she will not be at the next meeting.</p>	
<b>Adjournment</b>		Mr. de la Pena moved to adjourn the meeting at 1:53 p.m. Mr. Murashige seconded the motion. Motion carried 6:0.

Submitted by: \_\_\_\_\_  
Lani Agoot, Administrative Specialist

Reviewed and Approved by: \_\_\_\_\_  
Mary Tudela, Chair

( ) Approved as circulated.

( ) Approved with amendments. See minutes of \_\_\_\_\_ meeting.